

LEGISLATIVE RESEARCH COMMISSION

SEPARATION OF POWERS



REPORT TO THE
1983 GENERAL ASSEMBLY
OF NORTH CAROLINA

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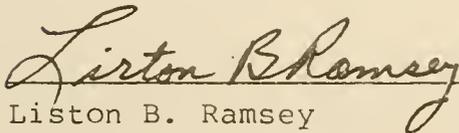
January 10, 1983

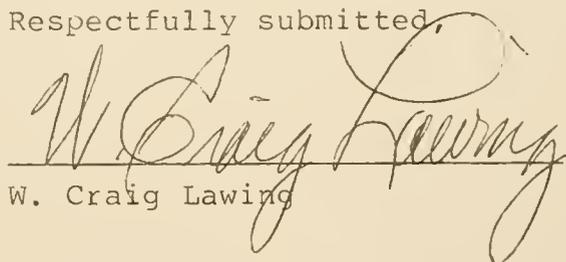
TO THE MEMBERS OF THE 1983 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1983 Session of the General Assembly of North Carolina on the matter of Separation of Powers. The report is made under the authority of G.S. 120-30.17(1).

This report was prepared by the Legislative Research Commission Committee on Separation of Powers, and the report and recommendations are approved and transmitted as amended by the Legislative Research Commission to the members of the 1983 General Assembly for their consideration.

Respectfully submitted,


Liston B. Ramsey


W. Craig Lawing

Cochairmen

LEGISLATIVE RESEARCH COMMISSION

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INTRODUCTION

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is composed of 12 legislators who study a broad range of subjects authorized for study by the General Assembly.

On January 12, 1982, the North Carolina Supreme Court rendered the Wallace v. Bone decision (304 N.C. 591 (1982)). That decision reviewed statutes placing legislators on the Environmental Management Commission in light of the Separation of Powers provision of the North Carolina Constitution (Article I, Section 6) and held that:

the legislature cannot constitutionally create a special instrumentality of government to implement specific legislation and then retain some control over the process of implementation by appointing legislators to the governing body of the instrumentality (at 608).

The President Pro Tempore of the Senate and the Speaker of the House of Representatives as co-chairmen of the Legislative Research Commission pursuant to G.S. 120-30.17(1) appointed a committee to study the impact of the Bone decision on other agencies of State Government. The President Pro Tempore and Speaker appointed themselves as co-chairmen of the Committee on Separation of Powers. The other members of the Committee were: Representatives Allen Adams, Parks Helms, Robert Hunter, Robert Jones, Martin Lancaster, George Miller, James F. Morgan, Margaret Tennille, Walter T. Watkins, Dennis A. Wicker and Richard Wright; and Senators Julian R. Allsbrook, Henson P. Barnes, Kenneth C.

Royall, Jr., and Robert Swain. Subsequent to the death of Representative Robert Jones, Representative Martin Nesbitt was appointed to replace him.

Prior to the 1982 regular session of the General Assembly, the Committee and its subcommittee met and made recommendations to the General Assembly, concerning various boards exercising executive powers on which members of the General Assembly served. The Legislative Research Commission approved the recommendations and two proposed bills on June 3, 1982, and they were introduced as House Bill 1486 and Senate Bill 799, and ratified respectively as Chapters 1191 and 1181 of the Session Laws of 1981 (Regular Session 1982).

Subsequent to sine die adjournment of the 1981 session, the co-chairmen asked the Committee to begin looking at the statutes relating to the Advisory Budget Commission and several other areas, and to make additional recommendations thereon.

COMMITTEE PROCEEDINGS

The Committee met on September 22, 1982 and reviewed 50 statutes relating to the powers of the Advisory Budget Commission and how they have been affected by the Bone decision and by the Advisory Opinion of the North Carolina Supreme Court. (See Advisory Opinion, in re Separation of Powers, 295 S.E. 2d 589.)

The Committee made tentative recommendations on 33 of these statutes, and asked the staff to do additional research on 17 others.

The Committee met again on November 9, 1982, and first discussed the 17 items left over, and made tentative recommendations on 15 of those, asking for more information on two items, the College Revolving Fund, and conflict between G.S. 138-4, G.S. 143A-9, and G.S. 143B-9. The Committee also reviewed 37 additional statutes relating to the Advisory Budget Commission, and made tentative recommendations on 36 of these, referring to a subcommittee further review of G.S. 143-18.1, concerning increase or decrease of capital projects and addition of new capital projects. The Committee also made recommendations concerning three boards and commissions not reviewed prior to the 1982 General Assembly.

The Committee met again on December 15, 1982, to take up the two items from the September 22 meeting and the one item from the November 9, 1982 meeting that had not been acted on. The Committee took action on those three recommendations, revised two which had previously been made (salary of Economic Development

Board Chairman and appointment procedure for State Board of Chiropractic Examiners) and took up eight new items making recommendations on seven of them. The Committee then adopted this report and the two bills which accompany it.

LEGISLATIVE RECOMMENDATIONS

The Committee on Separation of Powers has continued its study of the separation of powers between the branches of government, and makes the 96 recommendations listed below. A bill to implement most of this report is attached as Appendix "A". Portions of this report making changes in laws relating to revenue bonds or general obligation bonds are contained in a separate bill attached as Appendix "B". Section 1 of the first bill provides that it may be cited as the Separation of Powers Act of 1983. Section 1 of the second bill provides that it may be cited as the Separation of Powers Bond Act of 1983. In a number of occasions the Committee recommends statutes which will require consultation with the Advisory Budget Commission before taking action or for an officer to seek the advice of the Commission before taking action. The Committee sees this as a proper exercise of the oversight function of the General Assembly. Such consultation or advice is non-binding, and does not allow the Commission to take any action delaying or rejecting executive actions.

RECOMMENDATION #1. The Separation of Powers Act of 1982 (Chapter 1191, Session Laws of 1981) contained two incorrect cross-references in its internal citations. Those should be corrected. Section 2 of the bill implements this recommendation.

RECOMMENDATION #2. After the enactment of the Separation of Powers Act of 1982, but before adjournment sine die, the General Assembly created three executive boards, the North Carolina Board for Need-Based Medical Student Loans, the Committee on Art in

State Buildings, and the Board of Trustees of the Teachers and State Employees' Comprehensive Major Medical Plan, with a provision for appointments by the General Assembly. The Committee recommends that G.S. 120-123, which disqualifies members of the General Assembly from serving on 32 named boards, be amended to include those three boards. Section 3 of the bill implements this recommendation.

RECOMMENDATION #3. G.S. 18B-200 provides that the salary of the chairman of the Alcoholic Beverage Control Commission be fixed by the Governor with the approval of the Advisory Budget Commission. Since this power is legislative in nature and in any case can not be delegated to the Advisory Budget Commission, the Committee recommends that the salary be set by the General Assembly in the budget appropriations act, as is now done for judges and other officials. Section 4 of the bill implements this recommendation.

RECOMMENDATION #4. G.S. 20-2 provides that the salary of the Commissioner of Motor Vehicles be fixed by the Governor with the approval of the Advisory Budget Commission. Since this power is legislative in nature and in any case cannot be delegated to the Advisory Budget Commission, the Committee recommends that the salary be set by the General Assembly in the budget appropriations act. Section 5 of the bill implements this recommendation.

RECOMMENDATION #5. G.S. 20-189 provides that the Governor may request two members of the State Highway Patrol to be assigned to his office, and the salaries of those two persons shall be fixed by the Governor and the Advisory Budget

Commission. Because of the relatively lower level of the positions involved, the Committee recommends that the salary be set by the Governor after consultation with the Advisory Budget Commission. Section 6 of the bill implements this recommendation.

RECOMMENDATION #6. G.S. 20-196 authorizes the highway patrol to maintain a statewide radio system. The second paragraph of that section provides that if the appropriation is not adequate, the Director of the Budget with the approval of the Advisory Budget Commission may transfer funds from the appropriation item of "...betterments for State and county roads..." This transfer provision is archaic and obsolete. The Committee recommends repeal of the second paragraph. If transfers are needed, the normal Executive Budget Act procedure is adequate. Section 7 of the bill implements this recommendation.

RECOMMENDATION #7. G.S. 53-93.1 provides that the salary of the Deputy Commissioner of Banks shall be fixed by the Governor with the approval of the Advisory Budget Commission. G.S. 53-96 makes similar provision for the salary of the Commissioner of Banks. Since this power is legislative in nature and in any case cannot be delegated to the Advisory Budget Commission, the Committee recommends that these salaries be set by the General Assembly in the budget appropriations act. Sections 8 and 9 of the bill implement this recommendation.

RECOMMENDATION #8. G.S. 58-194.1 requires liability insurance on all state-owned motor vehicles. The second sentence states that departments, with the approval of the Advisory Budget

Commission, may apply for funding from the Contingency and Emergency Fund if the appropriation to pay the premium is inadequate. There is already a procedure in G.S. 143-12 to handle allocations from the Contingency and Emergency Fund. This sentence in G.S. 58-194.1 is not needed, and the Committee recommends its repeal. Section 10 of the bill implements this recommendation.

RECOMMENDATION #9. G.S. 58-241.6 requires in its last sentence that the salary of the Burial Association Commissioner be set by the North Carolina Mutual Burial Association Commission subject to the approval of the Advisory Budget Commission. The Committee feels that proper authority for this item is with the Burial Commission itself, and recommends repeal of this sentence. Adequate legislative review of salaries of officers of quasi-independent boards is already available. Section 11 of the bill implements this recommendation.

RECOMMENDATION #10. G.S. 58-241.11 requires the budget of the North Carolina Mutual Burial Association Commission be approved by the Advisory Budget Commission. This is an improper delegation of legislative power, and the Committee recommends repeal of this power. Section 12 of the bill implements this recommendation.

RECOMMENDATION #11. G.S. 66-58(f) and G.S. 148-70 require that the operation by the Department of Correction of facilities for the manufacture of products and of services be approved by the Advisory Budget Commission, and that the Department of Correction file quarterly reports detailing prison enterprise functions with the Director of the Budget in such format as is

required by the Advisory Budget Commission. The Committee feels that the power of approval of services and products should properly lie with the Governor, and that the Director of the Budget should dictate the format of the report made to him. Sections 13 and 14 of the bill implement this recommendation.

RECOMMENDATION #12. G.S. 86A-6 provides that the salary of the executive secretary of the Board of Barber Examiners be set by the Governor, with the approval of the Advisory Budget Commission. The Committee feels that this power should be with the Board. Section 15 of the bill implements this recommendation.

RECOMMENDATION #13. G.S. 95-69.13(c) provides that the members of the Board of Boiler and Pressure Vessel Rules should be paid a subsistence and travel allowance "as established by the Advisory Budget Commission in accordance with Chapter 138 of the General Statutes." Chapter 138 sets out certain allowances. Since the Advisory Budget Commission cannot constitutionally set these allowances, the Committee recommends that the reference to the Advisory Budget Commission be deleted so the general law will prevail. Section 16 of the bill implements this recommendation.

RECOMMENDATION #14. G.S. 95-134(c) provides that members of the State Advisory Council on Occupational Safety and Health shall be compensated on a per diem basis which shall be fixed by the Governor and the Advisory Budget Commission. The Advisory Budget Commission cannot exercise this function, and the Committee recommends that the per diem for this Council be the same as for state boards and commissions generally. Section 17 of the bill implements this recommendation.

RECOMMENDATION #15. G.S. 95-134(d) provides that certain persons may be appointed for temporary purposes to the State Advisory Council on Occupational Safety and Health and receive per diem and expenses as may be fixed by the Commissioner of Labor and the Advisory Budget Commission. For the reasons stated in Recommendation #14 above, the Committee feels that the general law should apply. Section 18 of the bill implements this recommendation.

RECOMMENDATION #16. G.S. 96-3(c) provides that the salary of the Chairman of the Employment Security Commission should be fixed by the Governor with the approval of the Advisory Budget Commission. This power is legislative in nature and in any case cannot be delegated to the Advisory Budget Commission. The Committee recommends that this salary be set by the General Assembly in the budget appropriations act. Section 19 of the bill implements this recommendation.

RECOMMENDATION #17. G.S. 97-78 states that the salaries of the Chairman and other members of the Industrial Commission are set by the Governor, subject to the approval of the Advisory Budget Commission. This power is legislative in nature and in any case cannot be exercised by the Advisory Budget Commission. The Committee recommends that these salaries be set by the General Assembly in the budget appropriations act. Section 20 of the bill implements this recommendation.

RECOMMENDATION #18. G.S. 106-26.20 provides for use of food products of the State farm operations program, and provides that in the case of disputes between departments, the Governor and the Advisory Budget Commission shall determine the form of agreement

and method of payment. The Committee feels that this power is executive in nature, and the Governor should exercise it after consultation with the Advisory Budget Commission. Section 21 of the bill implements this recommendation.

RECOMMENDATION #19. G.S. 106-266.7(d) provides that compensation for members of the Milk Commission be set by the Governor with the approval of the Advisory Budget Commission. The Committee feels that the compensation of the Milk Commission should be the same as for state boards and commissions generally. Section 22 of the bill implements this recommendation.

RECOMMENDATION #20. G.S. 108A-33(d) states that rules and regulations of the Social Services Commission which govern eligibility for public assistance and the amount of public assistance are subject to the approval of the Director of the Budget and the Advisory Budget Commission. Section 78 of the Separation of Powers Act of 1982 added a new G.S. 143B-153.1, effective July 1, 1983, which provides that such actions may be taken only by the General Assembly. This supercedes G.S. 108A-33(d), and the Committee recommends the repeal of G.S. 108A-33(d). If, for some reason, G.S. 143B-153.1 is repealed, or its effect postponed, G.S. 108A-33(d) would have to be amended to delete the approval powers of the Advisory Budget Commission. Section 23 of the bill implements the recommendation by repealing G.S. 108A-33(d).

RECOMMENDATION #21. G.S. 113-315.26 provides that the salary of management personnel of the Seafood Industrial Park Authority should be fixed by the Governor with the approval of the Advisory Budget Commission. This power is legislative in

nature and in any case cannot be delegated to the Advisory Budget Commission. The Committee recommends that these salaries be set by the General Assembly in the budget appropriations act. Section 24 of the bill implements this recommendation.

RECOMMENDATION #22. G.S. 115C-27 provides that the salary of the Controller of the State Board of Education shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. This power is legislative in nature and in any case cannot be exercised by the Advisory Budget Commission. The Committee recommends that this salary be set by the General Assembly in the budget appropriations act. Section 25 of the bill implements this recommendation.

RECOMMENDATION #23. G.S. 115D-3 provides that the salaries of the President and professional staff members of the Department of Community Colleges should be fixed by the Governor with the approval of the Advisory Budget Commission. The Committee feels that the Advisory Budget Commission cannot exercise this power but that the Governor should be required to consult with the Advisory Budget Commission before giving approval. Section 26 of the bill implements this recommendation.

RECOMMENDATION #24. G.S. 115D-4 provides that approval of any new community college, the conversion of an existing institution into a new type of institution, or the expenditures of state funds for any capital improvements at any existing institution are subject to the approval of the State Board of Community Colleges, the Governor, and the Advisory Budget Commission. Since the Advisory Budget Commission can no longer exercise this power, the Committee recommends that the Governor

be required to consult with the Advisory Budget Commission before talking any action under this section. Section 27 of the bill implements this recommendation.

RECOMMENDATION #25. G.S. 115D-5(e) provides that the State Board of Community Colleges may establish and operate extension units with the approval of the Governor and the Advisory Budget Commission. Since the Advisory Budget Commission cannot exercise this power, the Committee recommends that the Governor be required to consult with the Advisory Budget Commission before taking action under this section. Section 28 of the bill implements this section.

RECOMMENDATION #26. G.S. 116-11(9) b. provides that funds appropriated to the University of North Carolina Board of Governors for new programs and expansions and capital improvements shall be spent according to the Board's list of priorities, but that the Board and the Advisory Budget Commission may reallocate the funds to other priorities in the list or to items not on the list. Since the Advisory Budget Commission cannot exercise this power, the Committee recommends that joint approval must come from the Board and the Director of the Budget, but the Director of the Budget must first consult with the Advisory Budget Commission. Section 29 of the bill implements this recommendation.

RECOMMENDATION #27. G.S. 116-11(9) c. provides that the Advisory Budget Commission, on recommendation of the University of North Carolina Board of Governors, may transfer appropriated funds from one institution to another. Since the Advisory Budget Commission cannot exercise this power, the Committee recommends

it be jointly exercised by the Board and the Director of the Budget after the Director of the Budget consults with the Advisory Budget Commission. Section 30 of the bill implements this section.

RECOMMENDATION #28. G.S. 116-36(g) provides that expenses of University endowment funds created by acquisition or disposition of real or personal property shall be borne by the University endowment fund unless the Advisory Budget Commission authorizes some other source. The Committee recommends that approval power be transferred to the Director of the Budget, but that the Director of the Budget be required to consult with the Advisory Budget Commission. Section 31 of the bill implements this recommendation.

RECOMMENDATION #29. G.S. 116-37(e) provides that if the Advisory Budget Commission approves, operating funds of North Carolina Memorial Hospital may be budgeted, disbursed, and deposited through a special fund code. The Committee recommends that this power be exercised instead by the Director of the Budget after consultation with the Advisory Budget Commission. Section 32 of the bill implements this recommendation.

RECOMMENDATION #30. The College Revolving Fund was established by Chapter 1252, Session Laws of 1957, and only one appropriation to that fund was made. By Section 2 of Chapter 1039, Session Laws of 1959, \$1,441,000 was appropriated for a gym at what is now North Carolina State University. The loan is to be paid off in November of 1984. Although the statute says repayments were to be made to the Revolving Fund, repayments instead were made to the General Fund. The Committee recommends

changing the destination to the General Fund to validate the actions which have been taken, and to abolish the fund as of December 1, 1984. Sections 33 and 34 of the bill implement this recommendation.

RECOMMENDATION #31. G.S. 116-209.19 provides for a grants to students program, but with a limitation on grants to students to private institutions set at the average annual State appropriated tuition subsidy to undergraduates in The University of North Carolina and community college systems. The statute calls for the Advisory Budget Commission to mathematically calculate what this subsidy is. This power is executive in nature, and the Committee recommends that this calculation be made by the Secretary of Administration after consultation with the Advisory Budget Commission and other boards provided in the statute. Section 35 of the bill implements this recommendation.

RECOMMENDATION #32. G.S. 122A-4(f) provides that the Advisory Budget Commission must approve the salary of the Executive Director and certain other officers, staff and employees of the North Carolina Housing Finance Agency. This power is legislative in nature and in any case cannot be exercised by the Advisory Budget Commission. The Committee recommends that these salaries be set by the General Assembly in the budget appropriations act. Sections 36 and 37 of the bill implement this recommendation.

RECOMMENDATION #33. G.S. 122A-8.1 provides that out of funds appropriated to the Housing Finance Agency in 1975, the Advisory Budget Commission is to allocate to the State Treasurer funds related to providing fiscal functions relative to Housing

Finance Agency functions. The Committee recommends that this power be exercised by the Director of the Budget, after consultation with the Advisory Budget Commission. Section 38 of the bill implements this recommendation.

RECOMMENDATION #34. Chapter 123A of the General Statutes, the North Carolina Industrial Development Financing Act, was enacted by the 1967 General Assembly, and gives the Advisory Budget Commission certain powers. In Mitchell v. North Carolina Industrial Development Financing Authority, 273 N.C. 137 (1968), the North Carolina Supreme Court held that act to be unconstitutional. The Committee recommends repeal of Chapter 123A of the General Statutes. Section 39 of the bill implements this recommendation.

RECOMMENDATION #35. G.S. 126-3 provides that the salary of the State Personnel Director is to be fixed by the Governor with the approval of the Advisory Budget Commission. This power is legislative in nature and in any case cannot be exercised by the Advisory Budget Commission. The Committee recommends that the salary be set by the General Assembly in the budget appropriations act. Section 40 of the bill implements this recommendation.

RECOMMENDATION #36. G.S. 126-5 provides for exemption of certain classes of persons from the State Personnel Act. Exempted are persons whose salaries are subject to approval of the Advisory Budget Commission. Since the Advisory Budget Commission's approval powers are being changed to consultative, the Committee recommends that persons whose salaries cannot be set without consultation with the Advisory Budget Commission

continue to be exempt from the State Personnel Act. Section 41 of the bill implements this recommendation.

RECOMMENDATION #37. G.S. 126-8.1 allows for paid leave for State employees who compete in the Olympics or Pan American Games. G.S. 126-8.1 provides for the Department of Administration to issue rules with the approval of the Advisory Budget Commission. This power is executive in nature, and the Committee recommends that the Secretary of Administration consult with the Advisory Budget Commission. Section 42 of the bill implements this recommendation.

RECOMMENDATION #38. G.S. 126-67 provides for employee awards for cost savings suggestions, but the Advisory Budget Commission must approve such awards. This is an executive power, and the Committee recommends that the power of the Advisory Budget Commission be consultative in this area. Section 43 of the bill implements this recommendation.

RECOMMENDATION #39. G.S. 131-60.6 requires that any change in the Alcohol Detoxification Program at Black Mountain be approved by the Governor and Advisory Budget Commission. The Committee recommends that the Governor be required to consult with the Advisory Budget Commission before making changes in the program. Section 44 of the bill implements this recommendation.

RECOMMENDATION #40. G.S. 136-4 provides that the salary of the State Highway Administrator be set by the Secretary of Transportation with the approval of the Advisory Budget Commission. This power is legislative in nature, and in any case cannot be exercised by the Advisory Budget Commission. The Committee recommends that the salary be set by the general

Assembly in the budget appropriations act. Section 45 of the bill implements this recommendation.

RECOMMENDATION #41. G.S. 136-44.2 provides that the Department of Transportation may alter any dollar amounts in the budget appropriations bill up to ten percent, with the approval of the Advisory Budget Commission and notice to several legislative standing committees which no longer exist. The Committee recommends repeal of this sentence, so that the normal procedures in the Executive Budget Act for fund transfers will apply. Section 46 of the bill implements this recommendation.

RECOMMENDATION #42. G.S. 136-44.2 provides that no federally eligible construction project may be funded entirely with State funds unless the Joint Legislative Commission on Governmental Operations has given prior approval or failed to act within 60 days. The Committee feels this is an unlawful delegation of power, and recommends that the Department be required to consult with the Commission. Section 47 of the bill implements this recommendation.

RECOMMENDATION #43. G.S. 136-44.37 and G.S. 136-44.38 provide that the Advisory Budget Commission must approve allocations for rail revitalization projects and give approval to the projects. The Committee recommends that this power be exercised by the Director of the Budget after consultation with the Advisory Budget Commission. Section 48 of the bill implements this recommendation.

RECOMMENDATION #44. The General Statutes contain several conflicting provisions concerning how the salaries of most State administrative officials are set. G.S. 138-4, which has not been

expressly repealed, provides that, with limited exceptions, the salaries of State administrative officers not subject to the State Personnel Act are set by the Governor subject to the approval of the Advisory Budget Commission. In setting the salaries of administrative officers of a board or commission, the Governor and the Commission are required to consider the recommendations, if any, of the boards or commissions involved. Excepted from the authority conferred by G.S. 138-4 are (i) State officials whose positions are specifically authorized by the Constitution, (ii) the chief administrative assistants of these Constitutional officers, and (iii) the administrative officers of occupational licensing boards whose salaries were not set by the Governor with the approval of the Commission as of July 1, 1957. (G.S. 138-4).

The Executive Organization Act of 1971 contained a provision that "The salary of the head of each of the principal departments, except in those departments headed by elected officials who are constitutional officers, shall be set by the Advisory Budget Commission on the recommendations of the Governor." (G.S. 143A-9).

The Executive Organization Act of 1973, provided that "The salary of the head of each of the principal State departments, except in those departments headed by popularly elected officers, shall upon the recommendation of the Governor, be set by the General Assembly; provided, however, that the Governor may with approval of the Advisory Budget Commission increase or decrease the salary of a new appointee by a maximum of twenty percent (20%) over or under the authorized salary of the appointee's

immediate predecessor without action of the General Assembly, except that in the case of the Secretary of the Department of Human Resources, when such new appointee is a licensed physician, the salary may be set at a level comparable to that of physicians employed by the department. The salaries of elected officials shall be as prescribed by law." (G.S. 143B-9).

In neither the 1971 act or the 1973 act was any reference made to the earlier statute or statutes on the same subject.

The Committee recommends that G.S. 138-4, G.S. 143A-9, and G.S. 143B-9 be amended so that reference is made to salaries being set as provided by law, except that if no provision is made for setting the salary of an administrative officer, it be set by the Governor after consultation with the Advisory Budget Commission.

In any case, where a position is appointed by the Governor or by someone appointed by him or by a commission appointed by him and the salary is set by the General Assembly in the budget, the Governor may vary the salary up or down for a new appointee by not more than 10% from the statutory salary with the new salary to remain in effect until action by the General Assembly or the end of the fiscal year, whichever comes first. Sections 49 through 51 of the bill implement this recommendation.

RECOMMENDATION #45. G.S. 140-12 provides that, with the approval of the Governor and Advisory Budget Commission, the Secretary of Administration may provide space in a public building in the City of Raleigh to the State Art Society, Incorporated. The Committee recommends that the power of the Advisory Budget Commission be consultative in nature and that the

space be anywhere in Wake County to reflect the fact that the new State Art Museum is not in the Raleigh City limits. Sections 52 and 53 of the bill implement this recommendation.

RECOMMENDATION #46. G.S. 143-11 provides that if the Director of the Budget and the Advisory Budget Commission shall not agree in substantial particulars, the Director of the Budget shall prepare the budget based on his own conclusions, and shall cause to be incorporated therein such statement of disagreement as the Commission or any of its members shall submit to be included. The Committee feels that requiring the Director to include this within his budget might interfere with his constitutional duties, and recommends that the statements of disagreement be submitted under separate cover. Section 54 of the bill implements this recommendation.

RECOMMENDATION #47. G.S. 143-11.1 provides that during the Advisory Budget Commission biennial inspection of State institutions, the Director of the Budget may obtain the services of a photographer to assist the Commission and the General Assembly. The Committee feels that ample authority for this exists elsewhere, and the Budget Office indicates that a photographer would be provided if the Commission requested. The Committee recommends repeal of G.S. 143-11.1. Section 55 of the bill implements this recommendation.

RECOMMENDATION #48. G.S. 143-2, G.S. 143-4, G.S. 143-17, G.S. 143-23.1, G.S. 143-25, and G.S. 143-28 all provide that budget preparation and fiscal administration of the State Auditor, State Treasurer, and the Administrative Office of the Courts shall be under the sole jurisdiction of the Advisory

Budget Commission and not subject to control of the Governor. On its face, this conflicts with the provisions of Article III. Section 5(3) of the Constitution which provides that "The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State . . . the budget as enacted by the General Assembly shall be administered by the Governor." A memorandum appearing as Appendix "C" discusses this matter at greater length.

The Committee heard presentations from the State Auditor and State Treasurer about the need for fiscal independence from the Governor, inasmuch as they need independence to exercise their functions.

The Committee feels that this question needs further study and recommends that the Speaker of the House of Representatives and the President of the Senate appoint a joint select committee during the 1983 Session to study this matter, including consideration of amending the Constitution. No legislation is proposed by the Committee to implement this recommendation.

RECOMMENDATION #49. G.S. 143-16.1 states that proposed budgets submitted by the Governor and the Advisory Budget Commission contain appropriate information concerning federal funds. The Committee recommends this section be rewritten so that information concerning federal expenditures be in the same manner as other State funds. Section 56 of the bill implements this recommendation.

RECOMMENDATION #50. The Committee recommends that G.S. 143-18.1 which allows the Director of the Budget and the Advisory

Budget Commission to increase or decrease the scope and cost of capital improvement projects and to authorize capital improvement projects when funded by gifts or grants, be amended to grant the Director of the Budget, after consultation with the Advisory Budget Commission, the power to decrease only the scope of the project and to accept grants or gifts subject to the project being authorized by the General Assembly. Section 57 of the bill implements this recommendation.

RECOMMENDATION #51. G.S. 143-25 provides that the Director of the Budget with the approval of the Advisory Budget Commission can make quarterly allotments from appropriations. The Committee recommends that the Advisory Budget Commission be removed from this process and that the current practice of monthly allotments be made statutory. Sections 58 and 59 of the bill implement this recommendation.

RECOMMENDATION #52. G.S. 143-29 states that the Secretary of Administration may allow charitable hospitals, community sheltered workshops, counties, cities, and other governmental entities to purchase through state contract, under rules and regulations adopted by the Advisory Budget Commission. Since this power is executive in nature, the Committee recommends that the Advisory Budget Commission not participate in this process, and the rules be adopted by the Secretary of Administration, subject to the approval of the Director of the Budget. Section 60 of the bill implements this recommendation.

RECOMMENDATION #53. G.S. 143-52 provides that bids for supplies, materials, equipment, and contractual services shall be advertised at least once in a statewide newspaper at least 10

days prior to bid opening, but other methods of advertising may be adopted jointly by the Secretary of Administration with the approval of the Advisory Budget Commission. . Also, rules on receipt of competitive bids must be approved by the Advisory Budget Commission. These powers are executive in nature, and the Committee feels approval should be by the Director of the Budget rather than the Advisory Budget Commission. Section 61 of the bill implements this recommendation.

RECOMMENDATION #54. G.S. 143-49(4) provides that receipts from the sale of surplus, obsolete or unused equipment from General Fund agencies shall be placed in an equipment reserve fund, unless receipts were anticipated in the budget or budgeted against the cost of replacements. Expenditures from the equipment reserve fund may be made only with prior approval of the Director of the Budget and the Advisory Budget Commission. The Committee recommends that, except where previously budgeted, proceeds from such sales be placed in the General Fund. Section 62 of the bill implements this recommendation. The Committee recommends that the Appropriations Committee add a special provision to the 1983-85 budget appropriations act to transfer to the General Fund any balance in the equipment reserve fund on June 30, 1983.

RECOMMENDATION #55. G.S. 143-53 provides that the Advisory Budget Commission has broad authority to adopt rules in the purchase and contract area. This power is executive in nature, and the Committee feels it should be exercised by the Director of the Budget after consultation with the Advisory Budget Commission. Section 63 of the bill implements this

recommendation.

RECOMMENDATION #56. G.S. 143-53 provides that purchase and contract rules become effective upon filing with the Secretary of State, since the Advisory Budget Commission was not subject to the Administrative Procedure Act. Since the Director of the Budget will be issuing the regulations if Recommendation #56 is approved, a reference to the Administrative Procedure Act should be added. Section 64 of the bill implements this recommendation.

RECOMMENDATION #57. G.S. 143-56 provides that unless the Secretary of Administration and the Advisory Budget Commission order otherwise, purchase of books, manuscripts, maps, pamphlets, and periodicals; and perishable articles such as fresh vegetables, fresh fish, fresh eggs, and others so classified by the Secretary of Administration and the Advisory Budget Commission do not have to be made through the Department of Administration.

The Committee believes this power to be executive in nature and the Advisory Budget Commission should be removed from the process. The Committee also recommends that the statute be reversed so articles on these lists would be purchased through the Secretary of Administration unless the Secretary by regulation decides for economic reasons that purchase through the Secretary of Administration not be mandatory. Sections 65 and 66 of the bill implement this recommendation.

RECOMMENDATION #58. G.S. 143-60 provides that the Secretary of Administration may, with the approval of the Advisory Budget Commission, adopt rules concerning inventory reports, delivery, storage and inspection of supplies, and emergency purchases. The

Committee recommends that this power of the Advisory Budget Commission be consultative. Section 67 of the bill implements this recommendation.

RECOMMENDATION #59. G.S. 143-60 provides that the secretary of Administration, with the approval of the Advisory Budget Commission, may adopt procedures to allow the state to obtain materials "surplus or otherwise . . ." from federal, state or local governments. The Committee recommends that the power be exercised by the Director of the Budget after consultation with the Advisory Budget Commission. Section 68 of the bill implements this recommendation.

RECOMMENDATION #60. G.S. 143-215.40 provides that with the approval of the Governor and the Advisory Budget Commission, counties, cities, special districts, and the Advisory Budget Commission may adopt resolutions or ordinances which may be required by the United States as conditions precedent to river and harbor, flood control, or other public works projects. The Committee recommends that the power of the Advisory Budget Commission be consultative in this area. Section 69 of the bill implements this recommendation.

RECOMMENDATION #61. G.S. 143-215.73 provides that the Advisory Budget Commission must approve or disapprove specific grants for water resource development projects. The Committee recommends that the power of the Advisory Budget Commission be to review the decision. Section 70 of the bill implements this recommendation.

RECOMMENDATION #62. G.S. 143-243 provides that the Chairman of the Wildlife Resources Commission shall coordinate action of

the Wildlife Resources Commission in budgeting and planning the use of the Wildlife and Motorboat Funds, subject to the approval of the Advisory Budget Commission and the General Assembly. The Committee feels that as legislative approval is required, separate action by the Advisory Budget Commission is redundant. Section 71 of the bill implements this recommendation.

RECOMMENDATION #63. G.S. 143-243 requires that at least two meetings per year of the Wildlife Resources Commission be held in Raleigh. The Committee recommends deletion of this requirement. Section 72 of the bill implements this recommendation.

RECOMMENDATION #64. G.S. 143-246 provides that the salary of the Director of the Wildlife Resources Commission be set by the General Assembly with the approval of the Advisory Budget Commission. The Committee feels that the role of the Advisory Budget Commission should be consultative. Section 73 of the bill implements this recommendation.

RECOMMENDATION #65. G.S. 143-341(8)i. provides that the Department of Administration is to operate a central motor pool. On a schedule determined by the Department and the Advisory Budget Commission, most passenger cars must be transferred to the Department. Maintenance and repair rules, and rules as to use of private motor vehicles and delegation to agencies of the power of enforcing the rules are to be made by the Governor with the approval of the Advisory Budget Commission. The Committee recommends that the above decisions be made by law by the General Assembly. Sections 74 and 75 of the bill implement this recommendation.

RECOMMENDATION #66. G.S. 143-342.1 provides that the

Department of Administration shall set fees for the use of state-owned office space by self-supporting agencies, with the Advisory Budget Commission designating which agencies are self-supporting based on an examination of their budget. Receipts shall be paid to the Department of Administration. The Committee recommends that the power be transferred to the Director of the Budget, with receipts paid to the General Fund. Sections 76 and 77 of the bill implement this recommendation.

RECOMMENDATION #67. G.S. 143B-10(d) provides that the head of each department may create advisory committees or councils, and except if required by federal law, the committees or councils shall not exceed a membership of 10 unless approved by the Advisory Budget Commission. The Committee recommends that the maximum number be increased from 10 to 11, that no more than one member may reside in any one congressional district, and that the Advisory Budget Commission not have power to approve committees or councils of larger size. Section 78 of the bill implements this recommendation.

RECOMMENATION #68. G.S. 143B-27 provides that to implement the provisions of the Executive Organization Act of 1973, the Governor and the Advisory Budget Commission may transfer funds of an agency when the agency is transferred. This provision is obsolete and should be repealed. Section 79 of the bill implements this recommendation.

RECOMMENDATION #69. G.S. 143B-267 provides that the full-time members of the Parole Commission shall receive a salary fixed by the Governor with the approval of the Advisory Budget Commission. This power is legislative in nature and in any case

cannot be exercised by the Advisory Budget Commission. The Committee recommends that this salary be set by the General Assembly in the budget appropriations act. Section 30 of the bill implements this recommendation.

RECOMMENDATION #70. G.S. 143B-398 provides that two members of the Advisory Budget Commission shall serve on the Standardization Committee. The Committee recommends that the Standardization Committee be abolished. Section 81 of the bill implements this recommendation.

RECOMMENDATION #71. G.S. 143B-426.11 provides that the salary of the Executive Director of the Agency for Public Telecommunications shall be fixed by the Governor with the approval of the Advisory Budget Commission. This power is legislative in nature, and in any case cannot be exercised by the Advisory Budget Commission. The Committee recommends that the salary be set by the General Assembly in the budget appropriations act. Section 82 of the bill implements this recommendation.

RECOMMENDATION #72. G.S. 143B-426.11(7) states that the Board for Public Telecommunications may, with approval of the advisory Budget Commission, distribute its revenues and earnings in the form of grants, gifts, or loans. The Committee recommends that the Joint Legislative Commission on Governmental Operations review this provision. The Committee proposes no legislation.

RECOMMENDATION #73. G.S. 143B-434(c) provides that the salary of the Chairman of the Economic Development Board shall be set by the Governor with the approval of the Advisory Budget Commission. This position at one time received a full-time

salary, but in the last two State budgets, the Chairman has received the compensation for members of State Boards and Commissions generally. The Committee recommends that the special salary provision be removed from the law. Section 83 of the bill implements this recommendation.

RECOMMENDATION #74. G.S. 143B-454(5) provides that salaries of management personnel of the State Ports Authority be set by the Governor with the approval of the Advisory Budget Commission. This power is legislative in nature and in any case cannot be exercised by the advisory Budget Commission. The Committee recommends that this salary be set by the General Assembly in the budget appropriations act. Section 84 of the bill implements this recommendation.

RECOMMENDATION #75. G.S. 143B-469.1 provides that the salary of the General Manager of the Ports Railway Commission be set by the Governor with the approval of the Advisory Budget Commission. This power is legislative in nature and in any case cannot be exercised by the Advisory Budget Commission. The Committee recommends that this salary be set by the General Assembly in the budget appropriations act. Section 85 of the bill implements this recommendation.

RECOMMENDATION #76. G.S. 146-30 provides that when the land or timber from land under the supervision of the Department of Agriculture is sold, the net proceeds are to be deposited to a special account for capital improvements or other purposes approved by the Director of the Budget and the Advisory Budget Commission. The statute also provides that net proceeds from sale of park land shall be deposited to a capital improvement

account in the Department of Administration to be used for park land acquisition as approved by the Director of the Budget and the Advisory Budget Commission. The Committee recommends that these funds only be spent after approval of the general Assembly. Section 86 of the bill implements this recommendation.

RECOMMENDATION #77. G.S. 146-30 provides that proceeds of land sales in or around Butner be deposited in a capital improvement plan to the credit of the Hospital for sewers and street improvements according to a plan adopted by the Department of Administration, Office of State Budget and Management, Advisory Budget Commission, and the Board of Commissioners of Granville County. The Committee recommends that the Advisory Budget Commission be removed from this process. Section 87 of the bill implements this recommendation.

RECOMMENDATION #78. G.S. 147-15 provides that the salary of the private secretary to the Governor should be set by the Governor with the approval of the Advisory Budget Commission. The Committee recommends that this salary be set by the Governor. Section 88 of the bill implements this recommendation.

RECOMMENDATION #79. G.S. 147-86.1 sets up a pool account for local government unemployment compensation. The Advisory Budget Commission is authorized to transfer interest from the pool account to the State Treasurer to cover costs in administering the pool account. The Committee recommends that this executive power be exercised by the Director of the Budget. Section 89 of the bill implements this recommendation.

RECOMMENDATION #80. G.S. 147-87 provides that the salary of the Secretary of Revenue is to be set by the Governor with the

approval of the Advisory Budget Commission. Despite this statutory provision, Section 42.25 of Chapter 802, Session Laws of 1977 (the budget appropriations act), set a specific salary for the Secretary of Revenue, who has since 1977 received legislative salary increases as periodically established by the General Assembly in later budget appropriations acts. The Committee recommends that the statute be amended to reflect the fact that this salary is now set by the General Assembly. Section 90 of the bill implements this recommendation.

RECOMMENDATION #81. G.S. 159-5 provides that the salary of the secretary of the Local Government Commission shall be set by the Governor with the approval of the Advisory Budget Commission. This power is legislative in nature and in any case cannot be exercised by the Advisory Budget Commission. The Committee recommends that this salary be set by the General Assembly in the budget appropriations act. Section 91 of the bill implements this recommendation.

RECOMMENDATION #82. G.S. 115C-243 sets out authority for local boards of education to allow use of school buses by senior citizen groups. The State Board of Education with the approval of the Advisory Budget Commission must adopt a uniform schedule of charges. The Committee recommends that the power of the Advisory Budget Commission be consultative. Section 92 of the bill implements this recommendation.

RECOMMENDATION #83. G.S. 106-266.7 establishes the North Carolina Milk Commission, with 10 members. Two are appointed by the Speaker of the House and two by the Lieutenant Governor. Since this Board has executive powers, allowing the appointments

to be made by the Speaker and Lieutenant Governor is an improper delegation of legislative power. Instead, the appointments should be made by the General Assembly upon the recommendation of these two officers, as provided in G.S. 120-121. Sections 93 through 99 of the bill implements this recommendation.

RECOMMENDATION #84. G.S. 90-139 establishes the State Board of Chiropractic Examiners, with seven members. One is appointed by the Speaker of the House and one by the Lieutenant Governor. Since this Board has executive powers, allowing the appointments to be made by the Speaker and Lieutenant Governor is an improper delegation of legislative power. The Committee recommends that the appointments be made by the General Assembly upon the recommendation of these two officers, as provided in G.S. 120-121. Sections 100 through 106 of the bill implements this recommendation.

RECOMMENDATION #85. G.S. 143-143.10 establishes the North Carolina Manufactured Housing Board, with nine members. The Speaker of the House appoints two members, and the President Pro Tempore of the Senate appoints two members. Since the Board has executive powers, allowing the appointments to be made by the Speaker and President Pro Tem is an improper delegation of legislative power. The Committee recommends that the appointments be made by the General Assembly upon the recommendation of these two officers, as provided by G.S. 120-121, as amended. Sections 107 through 113 of the bill implement this recommendation.

RECOMMENDATION #86. G.S. 143-143.10 provides that the legislative appointments to the North Carolina Manufactured

Housing Board are categorical, from lists of at least three nominees submitted by the North Carolina Manufactured Housing Institute. The Committee recommends keeping the categories, but eliminating the list restriction. Section 114 of the bill implements this recommendation.

RECOMMENDATION #87. G.S. 113-315.31 provides that the Seafood Industrial Park Authority may issue revenue bonds with the approval of the Advisory Budget Commission. Since the Advisory Budget Commission cannot exercise this power, the Committee recommends it be exercised by the Governor after receiving the advice of the Advisory Budget Commission. Section 2 of the second bill implements this recommendation.

RECOMMENDATION #88. G.S. 116-41.4 and G.S. 116-41.9 allow the University of North Carolina to issue revenue bonds and revenue refunding bonds for certain University enterprises with the approval of the Advisory Budget Commission. Since the Commission cannot exercise this power, the Committee recommends it be exercised by the Director of the Budget after consultation with the Advisory Budget Commission. Sections 3 and 4 of the second bill implement this recommendation.

RECOMMENDATION #89. Article 19 of Chapter 116 of the General Statutes allows the University of North Carolina to issue revenue bonds for student housing. Article 21 of Chapter 116 of the General Statutes allows the University of North Carolina to issue revenue bonds for student housing, student activities, physical education, and recreation. Both of those statutes require joint approval by the University of North Carolina Board of Governors and the Advisory Budget Commission. Since the

Advisory Budget Commission cannot exercise this power, the Committee recommends that the joint approval be by the Board of Governors and the Director of the Budget, with the Director of the Budget being required to consult with the Advisory Budget Commission before giving approval. Sections 5 through 8 of the second bill implement this recommendation.

RECOMMENDATION #90. Section 7(a)(2) of the Clean Water Bond Acts of 1971, 1977, and 1981 each provide that the Advisory Budget Commission may increase the State share of a project from 25 percent to 30 percent in order for the project to qualify for a federal loan or grant, to meet an extreme public necessity or for purchase of real property when no federal funds are available. This power cannot be exercised by the Advisory Budget Commission. The Committee recommends it be repealed so the ceiling on all projects will be 25 percent. Sections 9 through 11 of the second bill implement this section.

RECOMMENDATION #91. Section 14 of the Clean Water Bond Act of 1971, and Section 16 of the Clean Water Bond Acts of 1977 and 1981 provide that administrative rules promulgated under those acts must be approved by the Advisory Budget Commission. Since the Advisory Budget Commission may not exercise that power, the Committee recommends that the rules be enacted into law by the General Assembly. Sections 12 through 14 of the second bill implement this recommendation.

RECOMMENDATION #92. Section 7(b) of the Clean Water Bond Acts of 1971, 1977, and 1981 provide for a contingency account which can be expended with the concurrence of the Advisory Budget Commission. The Committee recommends that the 1971 and 1977 acts

be amended so as to require the action be taken by the Director of the Budget after consultation with the Advisory Budget Commission. The Committee recommends that funds for contingencies in the 1981 act be subject to appropriation by the General Assembly for those purposes. Section 15 through 17 of the second bill implement this section.

RECOMMENDATION #93. Section 7(e) of the Clean Water Bond Act of 1977 provides an annual allocation of grants, but allows the Advisory Budget Commission to speed up the schedule. The Committee recommends this power be exercised by the Governor, after consultation with the Advisory Budget Commission. Section 18 of the second bill implements this recommendation.

RECOMMENDATION #94. The Committee recommends that any actions which were taken under statutes amended by the second bill be validated, so no doubt will exist about the validity of bonds issued or to be issued, or expenditures made from those funds. Section 19 of the second bill implements this recommendation.

RECOMMENDATION #95. The Committee recommends that provisions of the two bills be effective July 1, 1983 except for technical correction made by Sections 2 and 3 of the first bill which will be effective upon ratification, provisions relating to the College Revolving Fund which will become effective June 17, 1959 and January 1, 1985, and changes related to Recommendations 83 through 86 which would take effect 30 days after ratification. Section 115 of the first bill and Section 20 of the second bill implement this recommendation.

Short Title: Separation of Powers.

(Public)

Referred to:-----

A BILL TO BE ENTITLED

AN ACT TO MAKE AMENDMENTS CONCERNING THE ADVISORY BUDGET COMMISSION AND OTHER BOARDS TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMITTEE ON SEPARATIONS OF POWERS.

The General Assembly of North Carolina enacts:

Section 1. (a) This act may be cited as the Separation of Powers Act of 1983.

Sec. 2. (a) G.S. 120-123(21) is amended by deleting "G.S. 116-37", and inserting in lieu thereof "G.S. 116-27.1".

(b) G.S. 120-123(31) is amended by deleting "G.S. 143B-194", and inserting in lieu thereof "G.S. 143B-393".

Sec. 3. G.S. 120-123 is amended by adding the following new subdivisions:

"(33) The North Carolina Board for Need-Based Medical Student Loans, as established by G.S. 143-47.21.

(34) The Committee on Art in State Buildings, as established by G.S. 143-408.4.

(35) The Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, as established by G.S. 135-39."

Sec. 4. Alcoholic Beverage Control Commission. G.S.

18B-200(a) is amended by deleting the words "by the Governor with the approval of the Advisory Budget Commission", and inserting in lieu thereof, "by the General Assembly in the budget appropriations act."

Sec. 5. Commissioner of Motor Vehicles. G.S. 20-2 is amended by deleting the words "by the Governor, with approval of the Advisory Budget Commission", and inserting in lieu thereof "by the General Assembly in the budget appropriations act".

Sec. 6. Governor's Highway Patrolmen. G.S. 20-189 is amended by deleting "and the Advisory Budget Commission", and inserting in lieu thereof "after consultation with the Advisory Budget Commission".

Sec. 7. Radio System Transfers. The second paragraph of G.S. 20-196 is repealed.

Sec. 8. Deputy Banking Commissioner. G.S. 53-93.1 is amended by deleting the words "by the Governor with the approval of the Advisory Budget Commission", and inserting in lieu thereof "by the General Assembly in the budget appropriations act".

Sec. 9. Commissioner of Banks. G. S. 53-96 is amended by deleting "by the Governor subject to the approval of the Advisory Budget Commission", and inserting in lieu thereof "by the General Assembly in the appropriations act".

Sec. 10. State Vehicle Insurance. The second sentence of G.S. 58-194.1 is repealed.

Sec. 11. Mutual Burial Association Commission. The last sentence of G.S. 58-241.6 is repealed.

Sec. 12. The second sentence of G.S. 58-241.11 is repealed.

Sec. 13. Prison Enterprises. G.S. 66-58(f) is amended by deleting the words "Advisory Budget Commission" the first time it appears and inserting in lieu thereof "Governor", and by deleting the words "Advisory Budget Commission" the second time they appear and inserting in lieu thereof "Director of the Budget".

Sec. 14. G.S. 148-70 is amended by deleting the words "Advisory Budget Commission", and inserting in lieu thereof the word "Governor".

Sec. 15. Board of Barber Examiners. G.S. 86A-6 is amended by deleting "Governor with the approval of the Advisory Budget Commission", and inserting in lieu thereof "Board".

Sec. 16. Board of Boiler and Pressure Vessel Rules. G.S. 95-69.13(c) is amended by deleting the words "by the Advisory Budget Commission".

Sec. 17. State Advisory Council on Occupational Safety and Health. G.S. 95-134(c) is amended in the last sentence by deleting the words "on a per diem basis which shall be fixed by the Governor and Advisory Budget Commission" and inserting in lieu thereof the words "in accordance with Chapter 138 of the General Statutes".

Sec. 18. The last sentence of G.S. 95-134(d) is amended by deleting "may be fixed by the Commissioner and Advisory Budget Commission", and inserting in lieu thereof "provided in Chapter 138 of the General Statutes."

Sec. 19. Employment Security Commission. G.S. 96-3(c) is amended by deleting "and Advisory Budget Commission", and inserting in lieu thereof "fixed by the General Assembly in the budget appropriations act".

Sec. 20. Industrial Commission. G.S. 97-78(a) is rewritten to read: "(a) The salaries of the chairman and each of the other commissioners shall be fixed by the General Assembly in the budget appropriations act."

Sec. 21. State Farm Products. G.S. 106-26.20 is amended by deleting "and Advisory Budget Commission", and inserting in lieu thereof "after consultation with the Advisory Budget Commission".

Sec. 22. Milk Commission. G.S. 106-266.7(d) is amended to read: "Members of the Commission shall receive per diem and allowances as provided in G.S. 138-5."

Sec. 23. Social Services Commission. G.S. 108A-33(d) is repealed.

Sec. 24. Seafood Industrial Park Authority. G.S. 113-315.26 is amended by rewriting the second sentence to read "The salaries of these personnel shall be fixed by the General Assembly in the budget appropriations act."

Sec. 25. Education Controller. G.S. 115C-27 is amended by deleting the words "fixed by the Governor subject to the approval of the Advisory Budget Commission", and inserting in lieu thereof "fixed by the General Assembly in the Budget Appropriations Act."

Sec. 26. Community Colleges Staff. (a) The third

sentence of the second paragraph of G.S. 1150-3 is rewritten to read: "The compensation of this position shall be fixed by the General Assembly in the budget appropriations act."

(b) The third paragraph of G.S. 115D-3 is amended by rewriting the second sentence to read "The compensation of the staff members elected by the Board shall be fixed by the General Assembly in the budget appropriations act."

Sec. 27. Community Colleges. G.S. 115D-4 is amended by deleting the words "approval of the State Board of Community Colleges, the Governor and the Advisory Budget Commission", and inserting in lieu thereof "approval of the State Board of Community Colleges and the Governor, provided that the Governor shall consult with the Advisory Budget Commission before giving approval".

Sec. 28. Community Colleges Local Extension. G.S. 115D-5(e) is amended by deleting "and the Advisory Budget Commission", and by adding before the period at the end of the first sentence the words", provided that the Governor shall consult with the Advisory Budget Commission before giving approval".

Sec. 29. University of North Carolina. G.S. 116-11(9)b. is amended by deleting "Advisory Budget Commission", and inserting in lieu thereof the words "Director of the Budget (after the Director of the Budget consults with the Advisory Budget Commission) ".

Sec. 30. G.S. 116-11(9)c. is amended by deleting "Advisory Budget Commission", and inserting in lieu thereof

"Director of the Budget after consultation with the Advisory Budget Commission".

Sec. 31. University Endowment Fund. G.S. 116-36(g) is amended by deleting the words "Advisory Budget Commission", and inserting in lieu thereof "Director of the Budget after the Director of the Budget consults with the Advisory Budget Commission".

Sec. 32. North Carolina Memorial Hospital. C.S. 116-37(e) is amended by deleting the words "Advisory Budget Commission" and inserting in lieu thereof "Director of Budget after consultation with the Advisory Budget Commission".

Sec. 33. College Revolving Fund. Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-168.1. Payments.--Notwithstanding G.S. 116-168, all moneys received in payment of principal and interest on loans made from said fund shall be paid to the General Fund."

Sec. 34. Article 17 of Chapter 116 of the General Statutes is repealed.

Sec. 35. Grants To Students. G.S. 116-209.19 is amended by deleting "Advisory Budget Commission, after consultation with the Secretary of Administration", and inserting in lieu thereof "Secretary of Administration, after consultation with the Advisory Budget Commission", and by deleting "Advisory Budget Commission" the second time it appears and inserting in lieu thereof "Secretary of Administration".

Sec. 36. North Carolina Housing Finance Agency. G.S. 122A-4(f) is amended by rewriting the eighth sentence to read

"The salary of the Executive Director and all other staff and employees of the Agency whose positions are not designated as secretarial, clerical, or administrative shall be fixed by the General Assembly in the budget appropriations act.

Sec. 37. The tenth sentence of G.S. 122A-4(f) is amended by deleting the words "The Advisory Budget Commission shall fix the compensation of such officers" and inserting in lieu thereof the words "The General Assembly shall fix the compensation of such officers in the budget appropriations act."

Sec. 38. G.S. 122A-8.1 is amended by deleting the words "Director of the Budget after consultation with the Advisory Budget Commission".

Sec. 39. North Carolina Industrial Development Financing Authority. Chapter 123A of the General Statutes is repealed.

Sec. 40. State Personnel Director. The next to last sentence of G.S. 126-3 is amended to read "The salary of the Director shall be fixed by the General Assembly in the budget appropriations act."

Sec. 41. State Personnel Act. G.S. 126-5(c) is amended by deleting the words "or the Advisory Budget Commission or" and inserting in lieu thereof the words "or consultation with the Advisory Budget Commission or fixed".

Sec. 42. Athletic Competition. G.S. 126-8.1(c) is amended by deleting "and the Advisory Budget Commission", and inserting "after consultation with the Advisory Budget Commission".

Sec. 43. Employee Awards. G.S. 126-67 is amended by deleting "with the approval of", and inserting in lieu thereof the words "after consultation with".

Sec. 44. North Carolina Speciality Hospitals-Black Mountain. G.S. 131-60.6 is amended by deleting the words "and the Advisory Budget Commission", and inserting in lieu thereof "after consultation with the Advisory Budget Commission".

Sec. 45. State Highway Administrator. The third sentence of G.S. 136-4 is rewritten to read "He shall be paid a salary fixed by the General Assembly in the budget appropriations act."

Sec. 46. Highway Fund Transfers. The first sentence of the fifth paragraph of G.S. 136-44.2 is repealed.

Sec. 48. Rail Revitalization. G.S. 136-44.37 and G.S. 136-44.38 are amended by deleting in each place the words "Advisory Budget Commission", and inserting in lieu thereof "Director of the Budget after the Director of the Budget consults with the Advisory Budget Commission."

Sec. 49. Salary of Administrative Officers. The first sentence of G.S. 138-4 is deleted and the following inserted in lieu thereof:

"The salaries of all State administrative officers not subject to the State Personnel Act shall be payable in equal monthly installments, and if no provision is otherwise made by law, shall be set by the Governor subject to consultation with the Advisory Budget Commission.

Whenever by law it is provided that a salary shall be fixed or

set by the General Assembly in the budget appropriations act, and that office or position is filled by appointment of the Governor, or the appointment is subject to the approval of the Governor, or is made by a commission a majority of whose members are appointed by the Governor, then the Governor may, after consultation with the Advisory Budget Commission, increase or decrease the salary of a new appointee by a maximum of ten percent (10%) over or under the salary of that position as provided in the budget appropriations act, such increased or decreased salary to remain in effect until changed by the General Assembly or until the end of the fiscal year, whichever occurs first."

Sec. 50. The second and third sentences of the first paragraph of G.S. 143A-9 is repealed.

Sec. 51. The second paragraph of G.S. 143B-9 is rewritten to read:

"The salary of the head of each of the principal State departments and of elected officials shall be as provided by law."

Sec. 52. Art Society. G.S. 140-12 is amended by deleting the words "and the Advisory Budget Commission", and inserting in lieu thereof "after consultation with the Advisory Budget Commission".

Sec. 53. G.S. 140-12 is amended by deleting the words, "The City of Raleigh" and inserting in lieu thereof the words "Wake County".

Sec. 54. Budget Preparation. The third sentence of G.S. 143-11 is amended by deleting the words, "and shall cause to

be incorporated therein such statement of disagreement and the particulars thereof, as the Commission or any of its members shall deem proper to submit as representing their views", and inserting in lieu thereof, the words", and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views".

Sec. 55. ABC Tour Photographer. G.S. 143-11.1 is repealed.

Sec. 56. Federal Funds. G.S. 143-16.1 is rewritten to read:

"§ 143-161.1. Federal funds.--All federal funds shall be expended and reported in accordance with provisions of the Executive Budget Act, except as otherwise provided by law. Proposed budgets recommended to the General Assembly by the Governor and Advisory Budget Commission shall include information concerning the federal expenditures in State agencies, departments and institutions in the same manner as State funds.

Sec. 57. Capital Projects. The catchline and first two paragraphs of G.S. 143-18.1 are rewritten to read as follows:

"§ 143-18.1. Decrease of projects within capital improvement appropriations; requesting authorization of capital projects not specifically provided for.--After consultation with the Advisory Budget Commission and upon the request of the administration of a State agency or institution, the Director of the Budget may decrease the scope of a capital improvement project.

After consultation with the Advisory Budget Commission and upon

the request of the administration of any State agency or institution, the Director of the Budget may accept funds by gift or grant for the construction of a capital improvement project not specifically provided for or authorized by the General Assembly. These funds shall be placed in a special reserve account to be held by the State Treasurer until the end of the biennium in which the account was established or until the capital improvement project is authorized by the General Assembly, whichever occurs first. These funds shall be invested and the interest thereon shall be added to the reserve. If the project is not authorized by the end of that biennium, the State Treasurer shall pay the funds accumulated in the special reserve account to the grantor or donor. Upon the establishment of a special reserve account under this section, the Director of the Budget shall notify the Speaker of the House and President of the Senate of the receipt of the funds and the existence of the reserve account. All expenditures under this authorization shall be handled in full compliance with the provisions of the Executive Budget Act."

Sec. 58. Periodic Allotments. The second sentence G.S. 143-25 is amended by deleting the words "by and with the advice and consent of a majority of the Advisory Budget Commission".

Sec. 59. G.S. 143-25 is amended by deleting "quarter", and inserting in lieu thereof "month".

Sec. 60. Purchase and Contract. G.S. 143-49(6) is amended by deleting "Advisory Budget Commission", and inserting in lieu thereof "Secretary of Administration subject to the

approval of the Director of the Budget".

Sec. 61. Advertising For Bids. G.S. 143-52 is amended by deleting in both places, "Advisory Budget Commission", and inserting in lieu thereof "Director of the Budget".

Sec. 62. Surplus Sales. G.S. 143-49(4) is amended by deleting "an equipment reserve fund from which expenditures may be made only with prior approval, of the Director of the Budget and the Advisory Budget Commission", and inserting in lieu thereof the words "the General Fund".

Sec. 63. Purchase and Contract. G.S. 143-53 is amended by deleting the words "Advisory Budget Commission", and inserting in lieu thereof "Director of the Budget after consultation with the Advisory Budget Commission".

Sec. 64. G.S. 143-53 is amended by deleting "upon filing with the Secretary of State", and inserting in lieu thereof "in accordance with the provisions of Chapter 150A of the General Statutes."

Sec. 65. G.S. 143-56 is amended by deleting "with the approval of the Advisory Budget Commission" both times those words appear and by deleting the first comma.

Sec. 66. G.S. 143-56 is amended by deleting the word "Except" on line 1 and inserting in lieu thereof "Unless", and by deleting the word "not" on line 3.

Sec. 67. G.S. 143-60 is amended by deleting the words "with the approval of" the first time they appear, and inserting in lieu thereof "after consultation with".

Sec. 68. G.S. 143-60 is amended by deleting the words

"Further, the Secretary of Administration, with the approval of", and inserting in lieu thereof "Further, the Director of the Budget after consultation with".

Sec. 69. Federal Public Works. G.S. 143-215.40 is amended by deleting the words "and the Advisory Budget Commission", and inserting in lieu thereof the words "after the Governor consults with the Advisory Budget Commission".

Sec. 70. Water Resources Grants. G.S. 143-215.73 is amended by deleting the word "approval", and inserting in lieu thereof the word "review".

Sec. 71. Wildlife Resources Commission. G.S. 143-243(4) is amended by deleting "Advisory Budget Commission and the legislature" and inserting in lieu thereof "General Assembly".

Sec. 72. G.S. 143-243 is amended by deleting the words "in the City of Raleigh", and by deleting the words "and places".

Sec. 73. G.S. 143-246 is amended by deleting the words "subject to the approval of the Advisory Budget Commission", and inserting in lieu thereof "after consultation with the Advisory Budget Commission".

Sec. 74. Central Motor Pool. (a) G.S. 143-341(8)i.3. is amended by deleting "Department and the Advisory Budget Commission" and inserting in lieu thereof "General Assembly".

(b) G.S. 143-341(8)i.7. is amended by deleting "To adopt, with the approval of the Governor and Advisory Budget Commission," the first two times it appears and inserting in lieu thereof "The General Assembly by law may adopt".

(c) G.S. 143-341(8)i.7. is amended by deleting

"Governor and Advisory Budget Commission" the third time it appears and inserting in lieu thereof "General Assembly".

(d) G.S. 143-341(i)i.7. is amended by deleting "Department and approved by the Governor and Advisory Budget Commission" and inserting in lieu thereof "General Assembly under this subdivision".

(e) G.S. 143-341(i)i.7a. is amended by deleting "To adopt, with the approval of the Governor and the Advisory Budget Commission", both times it appears and inserting in lieu thereof "The General Assembly may adopt".

(f) G.S. 143-341(8)i.7a. is amended by deleting "Governor and the Advisory Budget Commission" the third time it appears, and inserting in lieu thereof "General Assembly".

Sec. 75. G.S. 14-247 is amended by deleting "Department of Administration and approved by the Governor and the Advisory Budget Commission", and inserting in lieu thereof "General Assembly".

Sec. 76. Office Space of Self-Supporting Agencies. G.S. 143-342.1 is amended by deleting "Advisory Budget Commission", and inserting in lieu thereof the words "Director of the Budget".

Sec. 77. G.S. 143-342.1 is amended by deleting the words "paid to the Department", and inserting in lieu thereof "paid to the General Fund".

Sec. 78. Advisory Councils. The second sentence of G.S. 143B-10 is rewritten to read: "Except as required by State or federal law, such committees or councils shall consist of no

more than 11 members, and no more than one member shall reside in any one congressional district; provided that if there are more than 11 members, at least one shall reside in each congressional district."

Sec. 79. Agency Reorganization Fund Transfer. G.S. 143B-27 is repealed.

Sec. 80. Parole Commission. G.S. 143B-267 is amended by deleting "Governor and approved by the Advisory Budget Commission", and inserting "General Assembly in the budget appropriations act".

Sec. 81. Standardization Committee. G.S. 143B-397 and G.S. 143B-398 are repealed. G.S. 143-63 is amended by deleting ", nor of the Standardization Committee".

Sec. 82. Agency For Public Telecommunications. G.S. 143B-426.11(9) is amended by deleting "Governor subject to the approval of the Advisory Budget Commission", and inserting in lieu thereof "General Assembly, in the budget appropriations act".

Sec. 83. Economic Development Board. G.S. 143B-434(c) is amended by repealing the last sentence.

Sec.84. Ports Authority. G.S. 143B-454(5) is amended by deleting the words "Governor with the approval of the Advisory Budget Commission" and inserting in lieu thereof "General Assembly in the budget appropriations act".

Sec. 85. G.S. 143B-469.1 is amended by deleting the words "Governor with the approval of the Advisory Budget Commission" and inserting in lieu thereof "General Assembly in

the budget appropriations act".

Sec. 86. Land Sales. G.S. 146-30(3) is amended by deleting "Director of the Budget and the Advisory Budget Commission" both times they appear and inserting in lieu thereof in both places the words "General Assembly".

Sec. 87. G.S. 146-30(3) is amended by deleting the words "Office of State Budget and Management and the Advisory Budget Commission" and inserting in lieu thereof "and the Office of State Budget and Management".

Sec. 88. Governor's Private Secretary. G.S. 147-15 is amended by deleting the words "with the approval of the Advisory Budget Commission".

Sec. 89. Local Government Unemployment Pool. G.S. 147-86.1(d) is amended by deleting the words "Advisory Budget Commission" and inserting in lieu thereof "Directory of the Budget".

Sec. 90. Secretary of Revenue. G.S. 147-87 is amended by rewriting the last sentence to read: "His salary shall be fixed by the General Assembly in the budget appropriations act."

Sec. 91. Local Government Commission. The second sentence of G.S. 159-5 is rewritten to read: "The salary of the Secretary shall be fixed by the General Assembly in the budget appropriations act."

Sec. 92. School Buses. G.S. 115C-243(f) is amended in the first sentence by deleting "State Board of Education" and inserting in lieu thereof "State Board of Education after consultation with the Advisory Budget Commission", by repealing

the second sentence and by deleting "with the concurrence of", and inserting in lieu thereof "after consultation with".

Sec. 93. Milk Commission. The first paragraph of G.S. 106-266.7(a) is amended by deleting "two of whom shall be appointed by the Lieutenant Governor, two of whom shall be appointed by the Speaker of the House", and inserting in lieu thereof "four of whom shall be appointed by the General Assembly in accordance with G.S. 120-121 (two upon the recommendation of the President of the Senate and two upon the recommendation of the Speaker of the House of Representatives)".

Sec. 94. The first paragraph of G.S. 106-266.7(a) is amended by adding the following new language at the end: "Appointments by the General Assembly shall be in accordance with G.S. 120-121."

Sec. 95. The second paragraph of G.S. 106-266.7(a) is amended by deleting "Lieutenant Governor", and inserting in lieu thereof "General Assembly upon the recommendation of the President of the Senate", and by deleting "Speaker of the House", and inserting in lieu thereof "General Assembly upon the recommendation of the Speaker of the House of Representatives."

Sec. 96. The fourth paragraph of G.S. 106-266.7(a) is amended by deleting the "the Speaker of the House shall appoint one for a term ending June 30, 1978, and one for a term ending June 30, 1979, and the Lieutenant Governor shall appoint one for a term ending June 30, 1979" and inserting in lieu thereof "The General Assembly shall appoint upon the recommendation of the Speaker of the House of Representatives one for a term ending

June 30, 1984 and one for a term ending June 30, 1985, and the General Assembly shall appoint upon the recommendation of the President of the Senate one for a term ending June 30, 1986, and one for a term ending June 30, 1987."

Sec. 97. The fourth paragraph of G.S. 106-266.7(a) is further amended by adding immediately after "of the appropriate year", the words "; Provided that subsequent appointments by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for terms of two years, ending on June 30 of the appropriate year."

Sec. 98. The fourth paragraph of G.S. 106-266.7(a) is amended by adding the following new sentence at the end: "Notwithstanding the above, persons appointed by the General Assembly may be removed by the General Assembly, and vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122."

Sec. 99. G.S. 120-123 is amended by adding a new subsection to read: "(36) The Milk Commission as established by G.S. 106-266.7."

Sec. 100. State Board of Chiropractic Examiners. The first sentence of G.S. 90-139(a) is amended by deleting the words "Lieutenant Governor and Speaker of the House", and inserting in lieu thereof the words "and General Assembly".

Sec. 101. The second sentence of G.S. 90-139(a) is amended by deleting "and one each by the Lieutenant Governor and the Speaker of the House" and inserting in lieu thereof the words "and two by the General Assembly in accordance with G.S. 120-121,

one each upon the recommendation of the President of the Senate and the Speaker of the House of Representatives".

Sec. 102. The second sentence of G.S. 90-139(b) is amended by deleting the words "three-year".

Sec. 103. (a) The third sentence of G.S. 90-139(b) is rewritten to read "The initial appointment of the General Assembly upon the recommendation of the President of the Senate shall be for a term to expire June 30, 1986, and the initial appointment of the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for a term to expire June 30, 1985, subsequent appointments upon the recommendation of the President of the Senate shall be for terms of three years, subsequent appointments upon the recommendation of the Speaker of the House of Representatives shall be for terms of two years."

(b) G.S. 90-139(b) is amended in the second sentence by deleting the words "three-year".

Sec. 104. G.S. 90-139(c) is rewritten to read:

"(c) The Governor and General Assembly, respectively, may remove any member appointed by them for good cause shown. In addition, upon the request of the Speaker of the House of Representatives or the President of the Senate concerning a person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President of the Senate, respectively the Governor may remove such appointee for good cause shown, if the request is made and removal occurs either (i) when the General Assembly has adjourned

to a date certain, which date is more than 10 days after the date of adjournment, or (ii) after sine die adjournment of the regular session. The Governor may appoint persons to fill vacancies of persons appointed by him to fill unexpired terms. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122."

Sec. 105. G.S. 120-123 is amended by adding a new subdivision to read:

"(37) The State Board of Chiropractic Examiners as established by G.S. 90-139."

Sec. 106. The first sentence of G.S. 90-140 is rewritten to read: "The Governor and the General Assembly upon the recommendation of the President of the Senate shall appoint chiropractic members of the Board for terms of three years from a list provided by the Board, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint a chiropractic member of the Board for a term of two years from a list provided by the Board."

Sec. 107. Manufactured Housing Board. G.S. 143-143.10(a) is amended by deleting the words "Speaker of the House of Representatives", and inserting in lieu thereof the words "General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121."

Sec. 108. G.S. 143-143.10(a) is further amended by deleting "President Pro Tempore of the Senate", and inserting in lieu thereof "General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-

121."

Sec. 109. The first sentence of the third paragraph of G.S. 143-143.10(a) is rewritten to read: "The members of the Board shall serve for terms of three years to begin on October 1, 1981, except that the persons appointed by the General Assembly upon the recommendation of the Speaker shall serve two-year terms to expire on September 30, 1985, and the persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve for three-year terms to expire on September 30, 1986. In the event of any vacancy of a position appointed by the Governor or Commissioner of Insurance, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointment made by the General Assembly shall be filled in accordance with G.S. 120-122."

Sec. 110. G.S. 120-123 is amended by adding a new subdivision to read: "(38) The North Carolina Manufactured Housing Board, as established by G.S. 143-143.10."

Sec. 111. G.S. 120-121(c) is amended by adding immediately after the words "Speaker of the House of Representatives" the words ", President Pro Tempore of the Senate,".

Sec. 112. G.S. 120-122 is amended by adding immediately after the words "Speaker of the House Of Representatives" the first time they appear, the words ", upon the recommendation of the President Pro Tempore of the Senate,".

Sec. 113. G.S. 120-122 is amended by adding immediately after the words "Speaker of the House of Representatives" the second time they appear the words ", the President Pro Tempore of the Senate,".

Sec. 114. G.S. 143-143.10 is amended by deleting the words "Except for the representatives from the general public", and inserting in lieu thereof the words "Except for the representatives from the general public and the persons appointed by the General Assembly".

Sec. 115. This act shall become effective July 1, 1983, except that Sections 1, 2, and 3 are effective upon ratification, Section 33 of the bill shall be effective from and after June 17, 1959, Section 34 of the bill shall become effective January 1, 1985, and Sections 93 through 114 shall become effective 30 days after ratification.

DRH-Powers

Short Title:

Referred to:-----

A BILL TO BE ENTITLED
AN ACT TO MAKE AMENDMENTS CONCERNING THE ADVISORY BUDGET
COMMISSION TO BOND ACTS TO IMPLEMENT THE RECOMMENDATIONS OF THE
COMMITTEE ON SEPARATION OF POWERS.

The General Assembly of North Carolina enacts:

Section 1. This act may be cited as the Separation of
Powers Bond Act of 1983.

Sec. 2. G.S. 113-315.31 is amended by adding
immediately after the words "with the approval of" the words "the
Governor after receiving the advice of".

Sec. 3. University Revenue Bonds. G.S. 116-41.4 is
amended by deleting the words "Advisory Budget Commission" all
four places they appear and inserting in lieu thereof in all
places the words "Director of the Budget after the Director of
the Budget consults with the Advisory Budget Commission."

Sec. 4. University Revenue Refunding Bonds. G.S. 116-
41.9 is amended by deleting the words "Advisory Budget
Commission" and inserting in lieu thereof the words "Director of
the Budget after consultation with the Advisory Budget
Commission." Sec. 5. Revenue Bonds For Student

Housing. Article 19 of Chapter 116 of the General Statutes is amended by adding a new section to read: "§ 116-175.1.

Consultation with Advisory Budget Commission.--Whenever this Article requires the approval of the Director of the Budget of an action, the Director of the Budget shall consult with the Advisory Budget Commission before giving approval."

Sec. 6. G.S. 116-175(4), G.S. 116-176, G.S. 116-178, G.S. 116-179, G.S. 116-182, and G.S. 116-183 are each amended by deleting the words "Advisory Budget Commission" whenever they appear, and inserting in lieu thereof the words "Director of the Budget".

Sec. 7. University Revenue Bonds. Article 21 of Chapter 116 of the General Statutes is amended by adding a new section to read: "§ 116-187.1. Consultation with Advisory Budget Commission.--Whenever this Article requires the approval of the Director of the Budget of an action, the Director of the Budget shall consult with the Advisory Budget Commission before giving approval."

Sec. 8. G.S. 116-189(5), G.S. 116-191, G.S. 116-192, G.S. 116-194, and G.S. 116-195 are each amended by deleting the words "Advisory Budget Commission" whenever they appear, and inserting in lieu thereof the words "Director of the Budget".

Sec. 9. Clean Water Bond Acts. Section 7(a)(2) of Chapter 909, Session Laws of 1971 is amended by deleting the first comma and the remainder of Section 7(a)(2) following the comma, and replacing it with a period.

Sec. 10. Section 7(a)(2) of Chapter 677, Session Laws of 1977 is amended by deleting the second comma and the remainder

of Section 7(a)(2) following the second comma, and replaing it with a period.

Sec. 11. Section 7(a)(2)a. of Chapter 993, Session Laws of 1981 is amended by deleting the second couma and the remainder of Section 7(a)(2)a. following the second couma and replacing it with a period.

Sec. 12. Section 14(b) of Chapter 909, Session Laws of 1971 is amended by deleting "approved by the Advisory Budget Commission and until printed or otherwise duplicated and a certified copy filed with the Secretary of State or other official of the State designated by law" and inserting in lieu thereof "enacted into law by the General Assembly".

Sec. 13. Section 16(b) of Chapter 677, Session Laws of 1977 is amended by deleting "approved by the Advisory Budget Commission and until printed and a certified copy filed with the Secretary of State or other official of the State designated by law", and inserting in lieu thereof "enacted into law by the General Assembly".

Sec. 14. Section 16(b) of Chapter 993, Session Laws of 1981 is amended by deleting "approved by the Advisory Budget Commission", and inserting in lieu thereof "enacted into law by the General Assembly".

Sec. 15. Section 7(b) of Chapter 909, Session Laws of 1971 is amended:

(1) by deleting "Advisory Budget Commission" the first, second, third, fifth, sixth and seventh and eighth time it appears, and inserting in lieu thereof "Director of the Budget

after consultation with the Advisory Budget Commission"; and

(2) by deleting "Advisory Budget Commission" the fourth time it appears and inserting in lieu thereof "Director of the Budget and the Advisory Budget Commission".

Sec. 16. Section 7(b) of Chapter 677, Session Laws of 1977 is amended:

(1) by deleting "Advisory Budget Commission" the first, second, third, fifth, sixth, seventh and eighth time it appears, and inserting in lieu thereof "Director of the Budget after consultation with the Advisory Budget Commission"; and

(2) by deleting "Advisory Budget Commission" the fourth time it appears and inserting in lieu thereof "Director of the Budget and Advisory Budget Commission".

Sec. 17. Section 7(b) of Chapter 993, Session Laws of 1981 is amended by deleting "Advisory Budget Commission" wherever it appears and by inserting in lieu thereof "General Assembly".

Sec. 18. Section 7(e) of Chapter 677, Session Laws of 1977 is amended by deleting the words "Advisory Budget Commission", and inserting in lieu thereof the words "Director of the Budget after consultation with the Advisory Budget Commission".

Sec. 19. Validation. All actions, appropriations, regulations, or bonds taken made or issued under the provisions of Chapter 909, Session Laws of 1971, Chapter 677, Session Laws of 1977, Part 4 of Article 1 of Chapter 116 of the General Statutes, Articles 19 or 21 of Chapter 116 of the General Statutes, Article 23C of Chapter 113 of the General Statutes, or

Part 10 of Article 10 of Chapter 143B of the General Statutes are valid notwithstanding the fact that certain powers were granted to and exercised by the Advisory Budget Commission.

Sec. 20. This act shall become effective July 1, 1983.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611

Appendix C



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LEGISLATIVE SERVICES OFFICER

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TELEPHONE 733-7044
FISCAL RESEARCH DIVISION
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TELEPHONE 733-2578
BILL DRAFTING DIVISION
TELEPHONE 733-6660

November 8, 1982

M E M O R A N D U M

TO: Committee on Separation of Powers

FROM: Gerry F. Cohen, Director of Legislative Drafting 

SUBJECT: Budget for Treasurer, Auditor, and Administrative Office of the Courts

The Executive Budget Act in G.S. 143-2 (Item #44) states that, "The expenditure of funds by or under the supervision and control of the State Auditor, State Treasurer, and Administrative Officer of the Courts...shall not, except as provided in G.S. 143-25, be subject to the powers of the Director of the Budget...it being intended that the State Auditor, State Treasurer, and Administrative Office of the Courts shall be independent of any fiscal control exercised by the Director of the Budget and shall be subject only to such control as may be exercised by the Advisory Budget Commission."

G.S. 143-4 (Item #45) further states that, "The Advisory Budget Commission alone shall be responsible for recommending to the General Assembly proposed biennial budgets for the requirements of the State Auditor, State Treasurer, and Administrative Officer of the Courts..."

G.S. 143-17 (Item #49) provides that quarterly allotments to those three Departments are made by the A.B.C.

G.S. 143-23.1 (Item #52) provides that transfers for those three Departments are handled by the A.B.C.

November 8, 1982

G.S. 143-25 (Item #53) does allow the Governor, with A.B.C. approval, to reduce those Departments pro rata to reduce a deficit.

G.S. 143-28 (Item #54) repeals the language of G.S. 143-2 (Item #45).

The exemptions for these three Departments did not appear in the Executive Budget Act as originally enacted in 1925. The exemptions for the Auditor and Treasurer were enacted in 1955, and for the Administrative Office of the Courts in 1981.

These exemptions appear to conflict with the literal provisions of Article 3, Section 5 of the Constitution. Language was added to the Constitution by the 1969 General Assembly, and approved by the voters in 1970 which states, "The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the state for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor."

This language does not seem to allow Departments to be exempted from gubernatorial control. The Constitution states the Governor's budget shall be comprehensive, which seems to indicate in context that it should cover all of state government. But the dictionary definition of "comprehensive" indicates that it means all or most.

Legislative history of this provision is minimal. The North Carolina State Constitution Study Commission in 1968 recommended this language to the General Assembly which enacted the budget powers section as recommended.

The Commission's minutes of October 11, 1968 notes that, "The Commission also approved the proposal that the Governor be empowered by the Constitution to formulate and administer the State Budget."

The Recommendations of the Committee on the Structure, Organization, and Powers of State Government state that, "The authority of the Governor to prepare and recommend the state budget to the General Assembly and to administer it after enactment by the General Assembly, should be set forth in the constitution" (Recommendation adopted September 20, 1968). The subcommittee on the Executive Department had adopted an identical recommendation of July 26, 1968.

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The only other evidence in the commission files are a series of newspaper articles which were submitted to the Commission on April 10, 1968. This series ran in the Winston-Salem Journal in March of 1968.

In an article appearing on March 28, 1968, the reporter quotes Governor Terry Sanford as stating that, "...the Governor... needs to have brought back to him the slices of executive authority which have been handed other elected officials or boards and commissions. He needs restored to him the reins of scattered budget authority..."

In a March 26, 1968 article, the budget process was criticized with a statement that, "Some now feel that while the budget is supposed to be the end-product of state policy, it has become the tail that wags the dog. One facet of the great budget maze is the make-up of the six-man Advisory Budget Commission...Supposedly, the executive and legislative branches of government are separate. But this is not true in terms of the budget commission...the legislative branch not only has final authority on state spending, but also authority over the all-important process of initiating the budget."

It thus appears that the intent of the study commission was to restore budget making and administration powers to the Governor. The exemptions for the Auditor and Treasurer were arguably constitutional when enacted in 1955, but it appears to me that the 1969 Constitution was intended to restore the reins of the budget to the Governor.

This being so, it is questionable whether the General Assembly can constitutionally say in G.S. 143-4 that the A.B.C. alone shall be responsible for the Auditor, Treasurer, and A.O.C. budgets. It could allow the A.B.C. to submit a separate budget for those Departments, but the Governor still has a constitutional duty to submit a comprehensive budget.

Article III, Section 5(10) does say that, "The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time.", but I do not think this language can be construed to allow the General Assembly to re-allocate powers assigned in the Constitution itself.

It would appear that the 1969 constitutional revision did not study this matter in detail. Certainly, there was no recorded discussion of exemptions for the Auditor and Treasurer.

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I believe that, in the case of actions regarding these Departments, as well as the A.O.C, you could allow the A.B.C. to submit a separate budget from the Governor and allow the heads of those three Departments to require special A.B.C. review of actions of the Governor they did not like concerning administration of their budgets.

Again, it would seem that "comprehensive" budget preparation might allow submission of less than a complete budget, but legislative history is incomplete. Given the trend of our Supreme Court, it seems likely they will interpret these provisions strictly.

Since there appear strong policy reasons for exempting the Auditor, Treasurer, and the Judiciary from some or all gubernatorial budget control, you might consider amending the Constitution in this regard.

GFC/no

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
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